

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Forfeiture Policy Statement)
) CI Docket No. 95-6
and)
)
Amendment of Section 1.80 of the Rules)
to Incorporate the Forfeiture Guidelines)

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**REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION on
NOTICE OF PROPOSED RULEMAKING**

The United States Telephone Association (USTA) respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned docket.¹ USTA is the principal trade association of the local exchange carrier (LEC) industry with over 1,000 members. USTA successfully petitioned the court to review the Commission's Forfeiture Policy Statement, on the basis that it constituted a binding rule, not a statement of policy, and thus must be submitted to notice and comment proceedings.²

In its initial comments, USTA noted that the Commission had failed to demonstrate a sufficient basis for the disparate treatment of common carriers in the Forfeiture Policy Statement. Numerous other commenters pointed out the same fact. See, e.g., Comments of Bell Atlantic, Comments of Southwestern Bell at 3, Comments of PageNet at 5, Comments

¹ In the Matter of Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Notice of Proposed Rulemaking, CI Docket 95-6, FCC 95-24, February 10, 1995 ("NPRM").

² See United States Telephone Association v. FCC, 28 F.3d 1232 (D.C. Cir. 1994), reviewing Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991), recon. denied, 7 FCC Rcd 5339 (1992), revised, 8 FCC Rcd 6215 (1993) ("Forfeiture Policy Statement").

of the Personal Communications Industry Association (PCIA) at 4-5. In particular, commenters noted that disparate statutory maxima do not evince a Congressional intent to impose higher penalties on all common carriers. See, e.g., Comments of PCIA at 5, Comments of Brown and Schwaninger at 3. The comments also demonstrate that there is no other basis for imposing higher base forfeitures on common carriers, be it an unwarranted assumption about common carriers' ability to pay, or that common carrier rule violations are somewhat more egregious. See Comments of Brown and Schwaninger at 3. The record reflects that no adequate basis exists for discriminatory forfeiture guidelines.

Moreover, the record reflects that achieving the Commission's policy goals would be best achieved with non-discriminatory forfeiture guidelines. As several commenters note, the Commission should revise its forfeiture guidelines to take into account the evolving nature of the telecommunications industry, in which companies who traditionally provide common carrier services are likely to also provide either television or cable services, and vice versa. The Commission's policy goal of regulatory parity among competing companies would not be served by discriminatory forfeiture guidelines. See, e.g., Comments of Bell Atlantic at 3, Comments of Southwestern Bell at 3. Accordingly, the Commission should revise its forfeiture guidelines to provide for identical base forfeiture amounts for each specific violation, and discontinue its unsupported discrimination based on the identify of the carrier.

USTA also agrees that these guidelines should serve the purpose of the Commission's forfeiture authority: to deter rule violations. See Comments of National Association of Broadcasters at 9; Comments of PCIA at 4-5 (noting that congressional increases in forfeiture maxima were intended to permit both meaningful sanctions and deter future violations). Accordingly, USTA supports Commission efforts to evaluate whether the same deterrent effect could be achieved with lower base forfeitures, and/or by the issuance of warnings coupled with educational procedures to further rule compliance in particular cases. At a minimum, the Commission must utilize meaningful criteria to determine what base forfeiture represents an effective deterrent for the rule violation in question. Merely using the service involved as a proxy is of highly questionable accuracy in this respect.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY

A handwritten signature in dark ink, appearing to be "Charles D. Cosson", written over a horizontal line.

Its Attorneys:

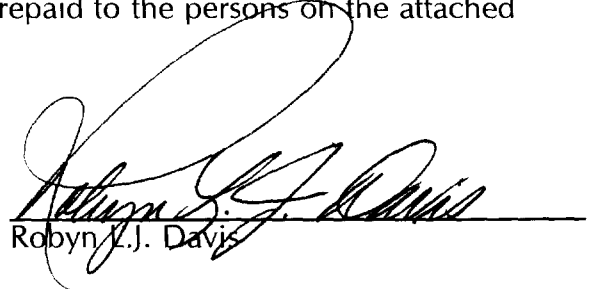
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April 17, 1995

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on April 17, 1995 copies of the Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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